



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

Notice of availability, request for comments

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice of availability, request for comments.

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**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed renewal of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210, ebsa.opr@dol.gov, (202) 693-8410, FAX (202) 219-4745 (these are not toll-free numbers).

**I. SUPPLEMENTARY INFORMATION:** This notice requests public comment on the Department's request for the Office of Management and Budget's (OMB) approval of the ICRs contained in Prohibited Transaction Exemptions (PTEs) 1975-1, 1984-24, and 1986-128. The PTEs provide exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code of 1986 (Code) for specified types of transactions.<sup>1</sup> The Department is proposing to renew the requirements of the ICRs contained in PTEs 75-1, 84-24, and 86-128 in place prior to 2016.

The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

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<sup>1</sup> They were amended as part of the Department's 2016 final rule defining who is a "fiduciary" under ERISA and the Code, which was published in the Federal Register on April 8, 2016. The final rule and PTE amendments were vacated by the Fifth Circuit Court of Appeal's decision in *Chamber of Commerce v. Department of Labor*, 885 F.3d 360 (5<sup>th</sup> Cir. 2018).

**Title:** Prohibited Transaction Exemption 1975-1, Exemptions from Prohibitions

Respecting Certain Classes of Transactions Involving Employee Benefit Plans and  
Certain Broker-Dealers, Reporting Dealers, and Banks

**OMB Number:** 1210-0092

**Affected Public:** Businesses or other for-profits, Not-for-profit institutions.

**Respondents:** 6,116

**Responses:** 6,116

**Estimated Total Burden Hours:** 1,019

**Estimated Total Burden Cost (Operating and Maintenance):** \$0

**Description:** PTE 1975-1 provides exemptions for transactions between employee benefit plans and individual retirement accounts (IRAs) and broker-dealers, reporting dealers and banks, relating to securities purchases and sales, provided specified conditions are met. The exempted transactions include an employee benefit plan or IRA's purchase of securities from broker-dealers' inventories of stocks, from underwriting syndicates in which a fiduciary is a member, from banks, from reporting dealers, and from a market-maker that is a fiduciary. The exempted transactions also include, under certain conditions, a plan's or IRA's accepting an extension of credit from a broker-dealer for the purpose of facilitating settlement of a securities transaction. Among other conditions, PTE 1975-1 requires plans and IRAs involved in the transactions to maintain adequate records of the transactions for a period of six years. The Department previously submitted an ICR to OMB for approval of this information collection and received OMB approval under OMB Control No. 1210-0092. The current approval is scheduled to expire on June 30, 2019.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters

**OMB Number:** 1210-0158

**Affected Public:** Businesses or other for-profits, Not-for-profit institutions.

**Respondents:** 2,789

**Responses:** 227,068

**Estimated Total Burden Hours:** 19,194

**Estimated Total Burden Cost (Operating and Maintenance):** \$98,115

**Description:** PTE 1984-24, as amended, provides an exemption for insurance agents, insurance brokers and pension consultants to receive a sales commission from an insurance company in connection with the purchase, with plan or IRA assets, of an insurance or annuity contract. Relief is also provided for a principal underwriter for an investment company registered under the Investment Company Act of 1940 to receive a sales commission in connection with the purchase, with plan or IRA assets, of securities issued by the investment company.

The PTE requires the insurance agents, insurance brokers, pension consultants and investment company principal underwriters relying on the exemption to obtain authorization from an independent plan fiduciary, provide certain disclosures, including disclosure of the commission payment, necessary for the independent plan fiduciary to

evaluate whether or not to grant authorization, and maintain records necessary to demonstrate that the conditions of the exemption have been met. The Department previously submitted an ICR to OMB for approval of this information collection and received OMB approval under OMB Control No. 1210-0158. The current approval is scheduled to expire on June 30, 2019.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Prohibited Transaction Exemption 1986-128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers.

**OMB Number:** 1210-0059

**Affected Public:** Businesses or other for-profits, Not-for-profit institutions.

**Respondents:** 11,894

**Responses:** 819,448

**Estimated Total Burden Hours:** 57,443

**Estimated Total Burden Cost (Operating and Maintenance):** \$661,045

**Description:** PTE 1986-128, as amended, permits persons who serve as fiduciaries for employee benefit plans and IRAs to effect or execute securities transactions on behalf of the plans and IRAs. The exemption also allows a fiduciary to act as an agent in an agency cross transaction for an employee benefit plan or IRA and one or more other parties to the transaction and receive reasonable compensation from the other party.

The PTE requires the fiduciary relying on the exemption to obtain written authorization executed in advance by an independent fiduciary of the employee benefit plan whose assets are involved in the transaction. Within three months prior to the

authorization, the fiduciary must furnish the independent fiduciary with any reasonably available information necessary for the independent fiduciary to determine whether an authorization should be made. The information must include a copy of the exemption, a form for termination, and a description of the fiduciary's brokerage placement practices. The fiduciary must also provide a termination form to the independent fiduciary annually so that the independent fiduciary may terminate the authorization without penalty to the plan; failure to return the form constitutes continuing authorization. The fiduciary must report all transactions to the independent fiduciary, either by confirmation slips or through quarterly reports. Finally, the fiduciary must provide an annual summary of the transactions to the independent fiduciary. The annual summary must contain all security transaction-related charges incurred by the plan, the brokerage placement practices (if changed), and a portfolio turnover ratio. The Department previously submitted an ICR to OMB for approval of this information collection and received OMB approval under OMB Control No. 1210-0059. The current approval is scheduled to expire on June 30, 2019.

## **II. Focus of Comments**

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the information collections; they will also become a matter of public record.

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Joseph S. Piacentini,  
Director, Office of Policy and Research,  
Employee Benefits Security Administration.

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